

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

RUTH SMITH, individually and
on behalf of all others Case No. 1:22-cv-00081-LMB-WEF
similarly situated,
Plaintiff,
vs.
SUNPATH, LTD, a Massachusetts
corporation,
Defendant.

VIDEOCONFERENCED 30(b)(6) DEPOSITION OF SUNPATH, LTD
(through ANDREW GARCIA)
December 8, 2022

VIDEOCONFERENCED APPEARANCES:

ON BEHALF OF THE PLAINTIFF:

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ON BEHALF OF THE DEFENDANT:

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Also Present: Paul Sporn, Esq.

1 Q. (By Mr. Peluso) Okay?

2 A. Yep.

3 Q. So is it your understanding that this is --
4 is it fair to say that this document is a -- an example, a
5 sample of the Call Center Marketing Agreement that SunPath
6 would have with one of its third-party partners?

7 A. Yes.

8 Q. Okay. Is it your understanding that that's
9 why it was filed in the case? The judge sort of asked
10 SunPath to provide a -- an example of its marketing
11 agreement?

12 MR. CAFFAS: I'll object to calling for
13 speculation. You can answer, Andrew.

14 A. I have no idea.

15 Q. (By Mr. Peluso) Okay. It's not a very
16 important question, so I'm not even going to bother trying
17 to rephrase.

18 All right. So I'm going to scroll down
19 here to what is page 10 of 17 of this document. Andrew,
20 do you see that the -- sort of the title of this document
21 says Direct Marketing Standards and Guidelines?

22 A. Yep.

23 Q. Is this added -- this document here, it
24 seems to go from 10 all the way to 17. Is this added as
25 an addendum to these Call Center Marketing Agreements?

1 like to go through these topics with you.

2 Topic 1 says, "All telephone calls you or
3 any third party acting on your behalf caused to be made to
4 plaintiff."

5 Did SunPath place any calls to plaintiff?

6 A. No. We don't -- we don't make any phone
7 calls unless it's for people who have called us about
8 claims.

9 Q. Right. That's my understanding, as well.
10 So SunPath does not do outbound telemarketing itself;
11 correct?

12 A. No. Nobody makes calls on our behalf,
13 either.

14 Q. Okay. I think we could disagree on that,
15 but --

16 MR. CAFFAS: Objection to form.

17 Q. (By Mr. Peluso) Any legal conclusions
18 about "on behalf of" are not really what I'm asking about.

19 So safe to say SunPath doesn't make
20 telemarketing calls? Any calls that it would make would
21 just be sort of direct calls with its customers if someone
22 calls in with an issue about a claim or something like
23 that?

24 A. Yes. And no one makes calls for us,
25 either. On behalf.

1 Q. Okay. Pretty similar, but Topic 5 says any
2 practices, policies, or procedures that you have
3 considered implementing or have implemented or any other
4 steps you have taken to ensure that you, American
5 Protection, or any other third parties acting on your
6 behalf comply with the TCPA or the VTPPA --

7 A. We --

8 Q. -- other than that -- sorry.

9 MR. CAFFAS: Hold on. Can I interject here
10 to say, Andrew, when he's reading these topics, please
11 make sure you're waiting until he actually asks a question
12 before you respond.

13 Q. (By Mr. Peluso) Okay. So this is similar
14 to the topic we just discussed, but other than the
15 Standards of Conduct, are you aware of any practices,
16 policies, or procedures that SunPath has implemented to
17 ensure that you or American Protection comply with the
18 TCPA or the VTPPA?

19 MR. CAFFAS: I will again raise the
20 objection that it calls for speculation, misstates the
21 witness's testimony, and calls for legal conclusions.
22 Andrew, you can answer to the extent that you're able to.

23 A. We have nothing to do with the TCPA. We
24 don't make any calls and no one makes calls on our behalf.
25 So we have the Standards of Conduct.

1 Q. (By Mr. Peluso) So, you know, the --
2 that's the "on behalf of" thing again. I understand that,
3 you know, that's sort of a legal conclusion that we don't
4 need to sort of argue over. But do you dispute -- do you
5 dispute that American Protection made phone calls in an
6 effort to sell your product?

7 MR. CAFFAS: I'll object to the form of the
8 question to the extent that it calls for a legal
9 conclusion, but you can answer.

10 A. I honestly don't know what they did,
11 whether they were inbound calls, outbound calls. They
12 need to adhere by the law. That's in the Standards of
13 Conduct. And we have nothing to do with, you know, how
14 they operate. They're expected to operate legally, within
15 the bounds of the law and the TCPA or any other rules that
16 exist.

17 Q. (By Mr. Peluso) Does SunPath take any
18 steps to ensure that they are doing so, or is it simply
19 sending the Standards of Conduct? Are there any
20 procedures to ensure --

21 A. If we get --

22 Q. -- compliance?

23 A. If we get a complaint, we will look into
24 the complaint if we're able to. But other than that, no.

25 Q. When you say "complaint," what do you mean

1 by that?

2 A. If a customer were to call us and complain
3 that they think they're getting illegal calls or something
4 like that, we would try to help them out and figure out,
5 you know, what's wrong, but that's it. We have our policy
6 that they need to operate within the bounds of the law.
7 That's the Standards of Conduct.

8 Q. Okay. So just to close the loop, other
9 than the Standards of Conduct, SunPath doesn't have any
10 other practices, policies, or procedures that have been
11 implemented to ensure compliance with the TCPA or the
12 VTPPA, other than the Standards of Conduct and, you know,
13 responding to a consumer calling in with a complaint?

14 MR. CAFFAS: Objection to the extent that
15 question is vague. Object to the form of the question.
16 Misstates the witness's testimony so far and calls for
17 improper legal conclusions. Andrew, if you can answer, do
18 so.

19 A. That's all, I mean, I've said, that took
20 place.

21 Q. (By Mr. Peluso) Okay. The next topic
22 here, the dialing equipment used to place any telephone
23 call to plaintiff's cellular telephone number, this will
24 probably be a quick one.

25 Did SunPath place any telephone calls to

1 A. That seems like the same question. We
2 don't -- we don't do training and we don't have an
3 internal do not call list.

4 Q. Has SunPath ever encouraged or required any
5 third party to conduct training regarding an internal do
6 not call list?

7 MR. CAFFAS: Objection to the form. Vague.
8 And I believe it's asked and answered. But you can answer
9 it, Andrew.

10 A. We don't have an internal do not call list
11 and we haven't had anyone train on a do not call list and
12 we don't make any calls --

13 Q. (By Mr. Peluso) Let me just ask -- pardon
14 me. I broke my rule and spoke over you and I'm sorry.

15 Let's just focus on American Protection,
16 this third party that we've discussed during this
17 deposition. Has SunPath ever conducted any training to
18 American Protection regarding an internal do not call
19 list?

20 A. No. We don't have an internal do not call
21 list.

22 Q. Okay. Has SunPath ever encouraged American
23 Protection to implement its own internal do not call list?

24 A. No.

25 Q. Okay. For Topic 12 -- I don't want to keep